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Effective Discipline

How to manage discipline at work

Eric Garner

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Effective Discipline: How to manage discipline at work
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ISBN 978-87-7681-988-0

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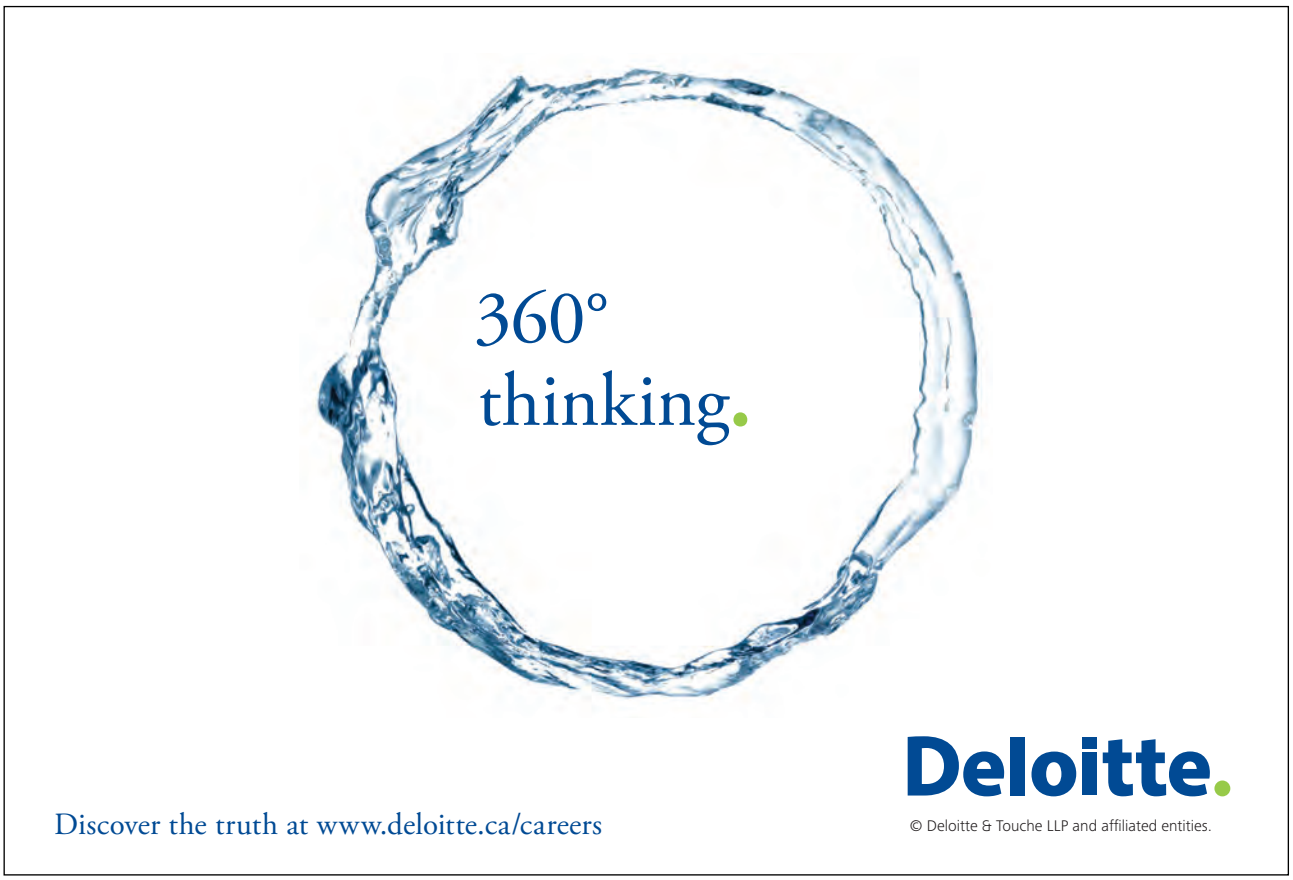

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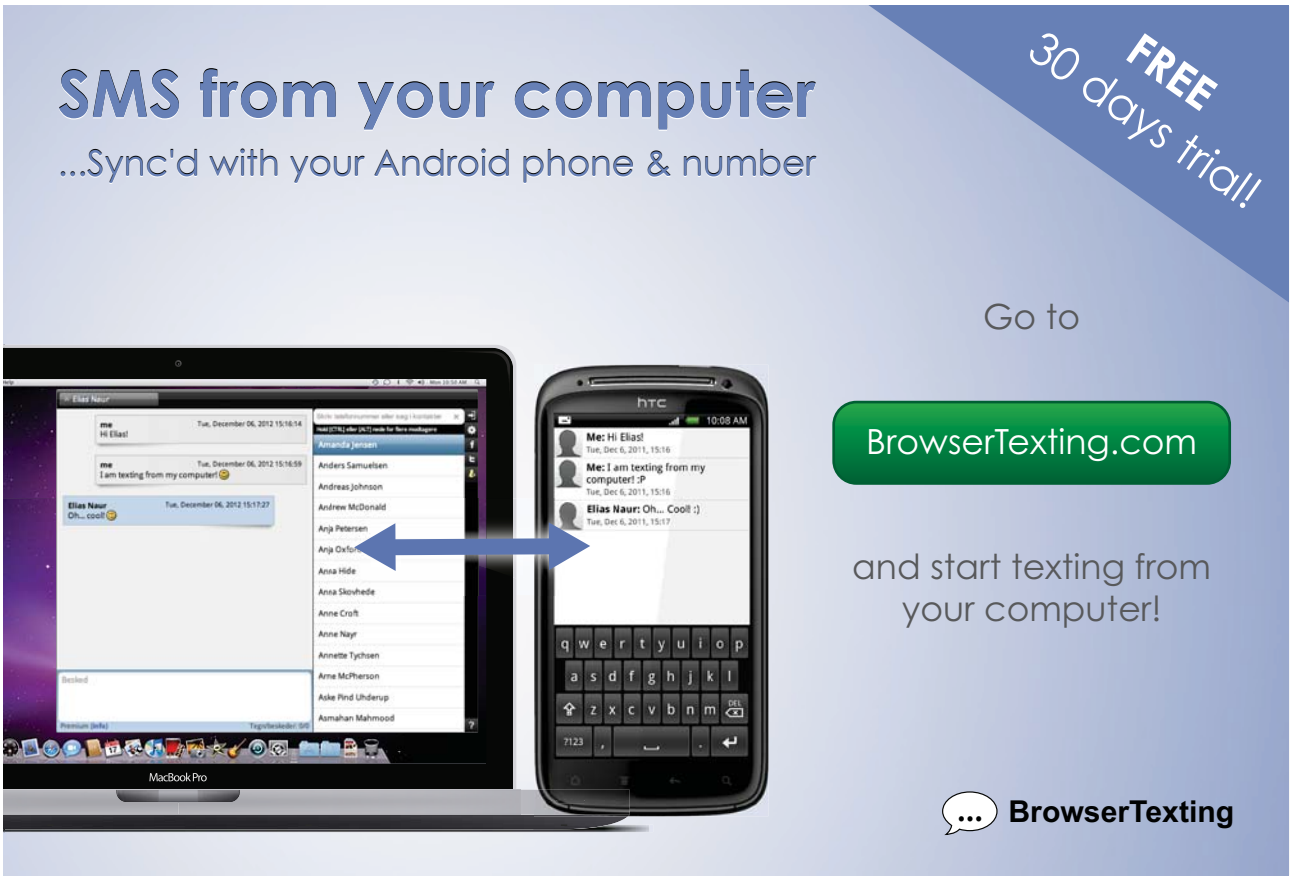

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Preface

Introduction to Effective Discipline

One of the most expensive responsibilities of management is discipline. Not only does it cost in terms of the stressful effect on everyone involved, it also costs in terms of lost productivity, poor staff morale, and the potentially crippling costs of tribunal cases going against you. It's not surprising that many managers would prefer not to get involved in discipline at all. But there is no choice. Just as in society as a whole, some kind of discipline is always necessary when people live and work together. You need rules. You need sanctions. And you need measures to correct.

In this book, we'll show you why it is important to manage discipline well. We'll show you why things start with a sensible approach to rule-setting and with suitable and adequate controls. We'll give you an insight into why people break rules at work and what you can do about it. We'll then take you through the steps of a sound disciplinary procedure that starts with the right way to conduct an investigation, is followed by the options you have in avoiding discipline, and ends up with what steps you can take to put things right. We'll equip you with the skills to conduct good disciplinary interviews and, if dismissal can't be avoided, how to handle it without bringing the weight of the law down upon you. We can't show you how to avoid discipline at work but we can help you manage it confidently and successfully.

Profile of Author Eric Garner

Eric Garner is an experienced management trainer with a knack for bringing the best out of individuals and teams. Eric founded ManageTrainLearn in 1995 as a corporate training company in the UK specialising in the 20 skills that people need for professional and personal success today. Since 2002, as part of KSA Training Ltd, ManageTrainLearn has been a major player in the e-learning market. Eric has a simple mission: to turn ManageTrainLearn into the best company in the world for producing and delivering quality online management products.

Profile of ManageTrainLearn

ManageTrainLearn is one of the top companies on the Internet for management training products, materials, and resources. Products range from training course plans to online courses, manuals to teambuilder exercises, mobile management apps to one-page skill summaries and a whole lot more. Whether you're a manager, trainer, or learner, you'll find just what you need at ManageTrainLearn to skyrocket your professional and personal success.

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1 The Routes to Discipline

Discipline is essential in all organisations where rules, standards and measures of performance have to be followed. However, applying discipline doesn't automatically produce effective discipline, ie discipline that works. To do that, you'll need to consider and manage the following 7 routes to discipline.

1.1 Defining "Discipline"

The word "discipline" has the same origins as the word "disciple". Just as a disciple follows the teachings of a master, so discipline means following the rules, laws, and procedures in an organisation or social unit. In the dictionary, "discipline" has a number of different meanings. It can mean instruction and learning. It can also mean improvement. And it can mean correction and punishment.

1.2 The Aims of Workplace Discipline

Like the aims of social laws, there can be a number of different aims in workplace discipline. These include:

a) conformance to rules
b) correcting behaviour that doesn't conform to the rules
c) re-asserting authority
d) setting an example
e) punishing wrong-doing.

These aims will vary according to the organisation, the needs of the business, and the particular circumstances of someone's behaviour.

1.2.1 To Conform or Not?

A number of management writers have argued that unquestioning conformance to rules and procedures is counter-productive to good people management.

Chris Argyris, psychologist at the Harvard Business School, argues that organisations actually encourage immature behaviour in their employees. What most organisations require is passive subordination, conformance and obedience; what individuals require as individuals is challenge, rule-breaking, and innovation. Indeed, in times of innovation in products and services, organisations may need a culture of non-conformance and rule-breaking in order to make the most of business opportunities. The challenge to management is to find the right balance between rules and conformance on the one hand and giving people freedom to express themselves on the other.

1.3 For and Against

There are arguments in favour and against punitive discipline at work. Some argue that discipline is a poor substitute for good people management, sends the wrong signals, and doesn't always work. Others argue that, without discipline, the workplace would be chaotic with everyone doing exactly what they wanted.

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1.4 The Contract of Employment

The contract of employment between employee and employer is at the heart of workplace discipline. The contract is the set of explicit and implicit expectations that employees have of the employer and the employer has of the employee. When an employee fails to live up to the expectations in the contract, eg through failing to attend work, failing to behave appropriately, or failing to reach a level of performance, then the employer has the right and duty to warn the employee that he or she is in breach of the contract and therefore breaking the trust on which the contract is built.

1.5 Moral, Practical, and Legal Questions

There are 3 sets of questions that you need to think about when manouevring your way through your organisation's approach to discipline:

a) the moral question. As an employer, you do not have the right to pass judgment on an employee's moral behaviour, particularly if it occured outside work and doesn't affect work.
b) the practical question. As an employer, you always need to weigh up whether the problem of ill-discipline is best handled by applying your disciplinary procedure, or whether it can be solved by some other means. Some of the issues you will need to think about are the costs of discipline, the likelihood of the discipline working, and whether you are being fair.
c) the legal question. As an employer, you are almost certainly going to be affected by the employment laws in your part of the world. You may need to consider whether your disciplinary action is fair, just, or illegal.

1.6 Your Style

Your approach to discipline will largely be determined by your assumptions about people. There are broadly 3 approaches:

a) if you believe that people need to be watched, supervised, and controlled, what is generally known as a Theory X approach, you will favour a tight authoritarian model of discipline.
b) if you believe that people can be reasoned with and all problems sorted out through dialogue, you will favour a consultative model of discipline.
c) if you believe that people are able to take responsibility for themselves if well-led and well-managed, what is generally known as a Theory Y approach, you will favour a loose self-discipline model.

In many cases, the best model will be a mix of some employee leeway within a framework of clear rules and guidelines.

1.7 A Model of Discipline

While every organisation will have its own rules on discipline, most organisations use a progressive approach to discipline. This means addressing breaches of discipline at an early stage through warnings and then, if there is no improvement, using more punitive measures, culminating in dismissal.

The following steps are the key stages in an effective disciplinary system.

1. setting rules, standards and targets based on expectations of what is reasonable from each employee

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2. checking for compliance to rules, standards and targets
3. investigating reports of non-compliance
4. if non-compliance has been found, considering alternative solutions to the problem rather than automatically enforcing discipline
5. if no suitable alternatives are available, activating a disciplinary procedure as laid down
6. using counselling as the first stage of non-serious discipline
7. using a series of warnings about the effects of non-compliance on the contract of employment
8. if no improvement, or if serious, dismissing the employee.

1.7.1 Balance

As with many other aspects of managing people, there is a paradox at the heart of discipline. This is that the freedom to perform to one's best can only be bought through the acceptance of rules and discipline. It is not a question of rules or freedom, but of rules and freedom. Freedom within organisational and social structures imposes responsibilities towards others and to be manageable, these must be formulated as rules and laws. Just as in a happy society where those in authority must find the happy balance, so too in organisations managers must find a happy balance between a level of freedom and a level of discipline.

Getting your disciplinary procedures right can be one of the most difficult functions of management. The route to effective discipline will often mean a tortuous journey around the difficulties and traps that lie in your way.

1.8 Key Points of this Module

1. Discipline encompasses instruction, order, obedience, control and punishment.
2. The traditional style of many organisations encourages people to behave in immature ways and so requires the use of discipline.
3. Those in favour of strong discipline in the workplace argue that people are best organised around clear-cut rules and procedures.
4. Those against discipline in the workplace argue that people need to be empowered not controlled.
5. The right to discipline employees resides in the contract of employment between employees and employer.
6. A contract of employment is based on trust; only when that trust is breached should discipline be used.

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2 Laws, Rules and Compliance

Just as in society at large, where laws are necessary for people to live together, so, in the microcosm of society that an organisation is, codes of conduct are necessary for people to work together.

Here are some of the main kinds of conformance.

2.1 Laws of the Land

Just because you work in an organisation does not mean that your behaviour is not still regulated by the laws of the country where you live. In fact, the nature of your work may impose additional laws on you. There are business-related laws such as employment laws, company laws, and finance laws as well as safety laws, environmental laws, and work-specific laws depending on the nature of your work. People at work are of course also subject to criminal laws just as they are anywhere else.

2.2 Rules

Rules are the "musts" of an organisation, the things you must do for the organisation to function properly and fairly. But for rules to be fair, they must be devised in the following way:

a) they should be relevant, realistic and enforceable
b) they should have the agreement of those they affect
c) they should be expressed in terms of required behaviour
d) they should be expressed with the business reasons behind them
e) they should be as few as necessary
f) they should be brought to everyone's notice.

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2.3 Standards of Work

Standards of work are the levels of performance that you expect others to reach. You should not set unrealistic levels that are impossible to reach nor too low levels that are meaningless. Standards of work should always relate to a business need, such as customer service or organisational efficiency. One way to devise clear standards of work is to use the SMART mnemonic, which stands for Specific, Measurable, Achievable, Realistic, and Time-Bounded. An example of a general standard using SMART could be, "All staff should be at their workplaces ready to work at their starting times each day."

2.4 Targets

Some jobs use targets instead of standards to measure work performance, eg sales and production workers. The difference between targets and standards is that targets measure outputs while standards measure inputs. Targets can also be set using the SMART mnemonic, as in, "Call centre staff should complete a minimum of 20 customer calls per hour."

2.5 Guidelines

Guidelines are workplace procedures that are the recommended ways in which targets and standards are met. Guidelines are important because they let everyone know the very minimum that is required of them and are the baseline for measuring gaps in performance.

2.5.1 Operating a Till

The following guidelines were used as the standard till operating procedure at Marks and Spencer's stores. They were the prescribed way for cashiers to ring up any item.

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1. Welcome the customer.
2. Enter the coded digit number for each product into the till.
3. Check the till price with the product price.
4. State the price to the customer. If there is a discrepancy call the supervisor.
5. Press the "item" key.
6. Press the "subtotal" key.
7. Tell the customer how much there is to pay.
8. Place the product to one side.
9. Ask the customer how they would like to pay.

2.6 Norms

The word, "norm", comes from the Latin word, "norma", which originally was a carpenter's tool for measuring right angles. "Normal" comes from from this root, meaning "according to rule" and "not deviating from standard".

The norms of an organisation are the way things are normally done. In stable times, they are likely to be strictly enforced and any deviation will be a matter for possible discipline. However, in less stable times, when the organisation is undergoing change, there may be no such thing as "a normal way of working" and then different rules and norms may have to apply.

2.7 Culture

"Culture" is the overall pattern of norms that describes how an organisation works. Terrence Deal and Alan Kennedy discovered that an organisation works best when it has employees who are suited to the culture of the organisation. They defined 4 types of organisational culture, based on the degree of risk and feedback in the organisation. These types are:

a) "work hard, play hard" cultures which look for quick results, eg sales environments
b) "process" cultures which are traditional, slow to change, and procedural, eg local authorities
c) "tough guy" cultures which favour fast fortunes, such as the advertising industry
d) "bet your company" cultures which are high risk but long paybacks, such as the energy industry.

It is sometimes thought that employees who cannot fit into an organisation's culture are as much a liability as those who under-perform.

Being fair to your employees means spelling out the laws, rules, standards, targets, guidelines, and norms of your organisation. When you do that, you create a basis for building an effective disciplinary structure.

2.8 Key Points

1. An organisation is subject to the laws of the land as well as specific business laws and professional requirements.
2. Rules may be explicitly stated or implicitly understood.
3. Codes of conduct are necessary to make it clear what kind of behaviour is acceptable and what is not.
4. Like workplace rules, excessive and punitive laws end up being broken and defied.
5. Where people fail to meet standards of performance, discipline should be the last option not the first.
6. Insisting on standard procedures and guidelines invariably results in an average level of work.

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3 Non-Conformance

The expression, "non-conformance", covers all the reasons why people fail to conform at work. There is no one simple reason for non-conformance and hence no way of predicting who will misbehave, when, and why. However, knowing some of the main reasons why people fail to conform gives you, as a manager or team leader, a head-start in doing something to prevent problems further down the line.
Here are some of the most common categories of non-conformance.

3.1 Rule-Breaking

Psychologist Gerald Mar says that the reasons why people break rules at work, even though they know the rules and could obey them if they wanted, can be complex. They include:

a) to express their individuality in the face of an impersonal organisation
b) to express their anger and frustration
c) for the sheer hell of it
d) to show off to others
e) to see if they can get away with it.

3.2 Boredom

Boredom arises when we no longer find work challenging or interesting. It often strikes when people find their jobs too easy, meaningless, or repetitive, when they have no control over what they do, and when they do not share in the goals, purpose, and vision of the team or organisation. All of these are issues of motivation that good people management should nip in the bud.

3.3 Frustration

Timothy Costello and Sheldon Zalkind, two American researchers, have found evidence of significant frustration at work, largely because of our past attempts to de-humanise the workplace and put systems first and people second. At one end of the spectrum, frustration can result in violent and at the other end, in just giving up.

3.4 Sabotage

The word, "sabotage", comes from the French word, "sabot", for a wooden clog. One derivation of the word is that it comes from the actions of French Luddites in the Industrial Revolution who put their "sabots" into powered looms to slow the machinery down. Research suggests that, political reasons are rare for acts of sabotage at work, the main reasons being mischief and frustration.

3.4.1 Criminal Behaviour

Workplaces can offer easy opportunities for the criminal-minded. Unlike public places, they are less scrutinised by authorities. Controlling criminal acts is left to management. Criminal behaviour can range from minor acts of pilfering and fiddles, to vandalism and sabotage, to theft and fraud on perhaps a large scale.

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One study of criminal behaviour suggests there are a range of reasons why people should break the law at work:

- people feel alienated from the organisation and seek revenge
- jealousy of those whom they perceive as "the haves"
- easy access to money and other resources
- greater opportunity to commit criminal acts
- greater opportunity to get away with it.

3.5 Absence

While some people express their anti-company feelings at the workplace, others express them by not turning up for work at all. Non-genuine absence is an issue in many organisations that fail to manage employee dis-interest. In surveys, nearly half the people who are absent without authorised reasons are due to poor motivation; a third of the no-shows are said to be due to "family issues"; and the next highest category are due to stress.

3.6 Personality Clashes

Research shows that the most important factor in determining whether somone is happy at work is the quality of their relationships with those they work beside, in particular with their boss. When relationships are good, things run well; when they are poor and nothing is done about them, employees fail to conform, possibly by going absent, showing bad attitudes, and in acts of misconduct.

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3.7 Dishonesty

Workplaces can offer easy opportunities for people to be dishonest. Unlike public places, the workplace is less scrutinised by authorities. Gerald Mar has studied workplace dishonesty in depth. He classifies people who "fiddle" as "hawks", "vultures", "Wolves", and "donkeys" according to how much they steal and whether they work alone or in groups.

The types of non-conformance at work are as varied as the opportunities presented and the inventiveness of people to take advantage. That's why, as a manager or team leader, you need to have adequate supervision in place when things go wrong and adequate systems in place to do something about it.

3.8 Key Points

1. While some form of control of people's behaviour and performance is necessary at work, it needs to be fair and non-intrusive.
2. Excessive or discriminatory controls on people are likely to lead to accusations of discrimination or harassment.
3. Minor lapses of discipline are not necessarily evidence of more serious cases of indiscipline.
4. People break rules for a range of reasons ranging from personal gain to boredom.
5. Criminal activity in the workplace is often undertaken because people think they can get away with it more easily.
6. People sometimes carry out acts of misconduct and sabotage to show that they have some control at their work.

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4 The Disciplinary Investigation

As soon as you think that someone in your team has breached a disciplinary rule, you should carry out some kind of investigation. It could be a short preliminary investigation to establish the facts or a much larger enquiry. As part of the disciplinary process, your investigation must be carried out fairly.

Here are some of the ways to do it.

4.1 Lay Down the Groundrules

The groundrules for your disciplinary investigations should be laid down in your disciplinary policy. This is to ensure that they are fair and consistent and known to everyone. It is up to you to fine-tune the detail but here are some of the key issues to think about:

a) separate the role of disciplining officer (usually a line manager of the person under investigation) and the investigation officer (usually someone not directly involved with the person under investigation)
b) explain the role of the investigation officer and what they can and can't do
c) make sure that the investigation officer is someone who can drop their other responsibilities and give the investigation their full attention.

4.2 The Core Statement

The Core Statement is a useful way to agree with the disciplining officer what exactly the purpose of the investigation is. It is at the heart of the investigative report because it defines what the report does.

The core statement consists of three parts...

- the type of investigation or report
- what the report actually aims to do
- what issue exactly is to be investigated.

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An example of a core statement might be...

"The investigation and subsequent report for the disciplining officer should describe the sequence of events in two alleged cases of fraudulent use of clock cards on Friday June 6th."

4.3 Clarify the Investigator's Role

The role of the investigating officer is quite simple: to investigate the facts of a case and report back to the disciplining officer. He or she may do this alone or, as the case demands, with others. Those chosen should be, and appear to be, scrupulously fair. The role will involve speaking to those who can give details of the facts of the case, which usually will be the people under investigation and witnesses. The pace of the investigation should be as swift as fairness allows.

4.4 Gather Information

To gather information in any disciplinary investigation, you can't do better than follow Rudyard Kipling's dictum on the "Six Honest Serving Men". It runs as follows:
"I keep six honest serving-men
(They taught me all I knew);
Their names are What and Why and When
And How and Where and Who."

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4.4.1 Questions

It is a good idea prior to a fact-finding interview to have a set of prepared questions that you feel your interviewees might be able to help you with. These then need to be woven into a conversational style of interviewing which encourages people to do most of the talking.

The four main types of questions to use in fact-finding interviews are...

1. open questions to get people talking, eg "Could you tell me in your own words what you saw?"
2. closed questions to confirm information, eg "Did he say anything?"
3. probing questions to get more details, eg "When you say "struck him" what exactly do you mean?"
4. summarising questions to check your understanding, eg "So what you're saying is that you didn't actually see him being struck?"

4.5 Take Witness Statements

Most of the facts about a case of alleged indiscipline will come from people under investigation and the witnesses. This means that, as an investigating officer, you will need to sit down with these people and interview them. These interviews must be scrupulously fair. Use open questions and keep away from interrogating questions such as:

a) loaded questions, eg "Isn't it your job to know?"
b) hinting questions, eg "So it could have been him?"
c) brow-beating questions, eg "Come on, you must have some idea?"
d) theorizing questions, eg "So, could he have done it?"
e) leading questions, eg "Isn't he the only one who could have done it?"

4.6 Take Notes

You must take notes throughout a witness statement or have someone record them for you. Always explain to the witness that you need to take notes and get them to read and verify them at the end of the interview. Depending on the case and the witness, you may have to write down what the witness says word for word. Generally, however, you should use key words for "big picture" notes and verbatim words for important details.

4.7 Produce Your Report

In most investigations, your final job in the investigation process will be to produce a report for the disciplining officer. You may be required to do this in writing or in person. Always stick to the facts as reported, even if you are put on the spot to give your opinion, eg...

Disciplining officer: "Well, do you think he did it?"
You: "Well, he stated that.... and then witness A said... but witness B was quite sure that..."

Dealing with a disciplinary case effectively means being fair and consistent at every stage. This includes the investigation stage. Follow the above steps and fairness is guaranteed.

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4.8 Key Points

1. Investigations into alleged cases of indiscipline should not be carried out by the line manager or disciplining officer.
2. A core statement is a useful way to define the purpose and scope of an investigation.
3. The aim of an investigating officer's report is to allow the disciplining officer to make a decision about the right action to take.
4. A disciplinary investigation may include witness statements, visiting the scene or re-enacting events.
5. Avoid using interrogation tactics with witnesses or those involved in cases of alleged indiscipline .
6. In gathering information, record big picture notes with key words and important details verbatim.

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5 Alternatives to Discipline

In those clear-cut cases where a serious breach of discipline breaks the trust between you and an employee, taking disciplinary action is unavoidable. However, these are likely to be a minority of cases. The majority of cases will consist of minor breaches of discipline, unexpected breaches, and more complex situations. In these cases, you should not use discipline as your first and only response. You should consider alternatives instead.

Here are some of the key things you should think about in such cases.

5.1 Will It Work?

Research suggests that up to half of all employees disciplined feel like victims and up to a third don't think the discipline is fair. This suggests two things. First, an awful lot of people resent being disciplined for things they have done or not done. Second, they are unlikely to change their behaviour or attitude as a result of the disciplining.

5.1.1 Victims

There are several reasons why, according to research, nearly half the people involved in disciplinary cases feel they have been unfairly treated and see themselves as "victims". These include the belief that...

- they had been singled out while others got away with it
- they agreed that they had done something wrong but disliked the way they had been treated
- they felt the rule was wrong, arbitrary and only applied at the whim of management
- they felt aggrieved, hurt and embarrassed at being treated like a child in front of colleagues and workmates

Regardless of the rights and wrongs, having so many people feeling victims who should be partners in the enterprise, bodes ill for the success of any business.

5.2 The Costs

Most of the costs of discipline lie under the surface. Like an iceberg, the visible costs involved, - such as the cost of investigations, meetings, and hearings, - while high are not as high as the invisible costs. These are more long-term, wider-reaching, and damaging and include poor staff relations, discontent, plots of revenge, loss of respect for management, the creation of a victim culture, and de-motivated employees.

5.3 Prevention Rather Than Cure

Looking at alternatives to discipline can mean changing your traditional management mindset from one of punishing people for wrong-doing to one of resolving people problems before they become serious. This means accepting that when people break rules out of frustration, boredom, and alienation, this is a people management problem that you can and should do something about. Taking this route means that, instead of perpetuating people problems through discipline, you have the chance to prevent them happening in the first place.

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5.4 "We Talk To People"

Red Auerbach, coach of American basketball team, the Boston Celtics, says that, when the only response to rule-breaking is discipline, you create fear in your team and, as a result, people who work like robots not humans. Instead, Auerbach says, "we talk to people". Two useful ways to talk people through disciplinary problems are mediation and counselling. Mediation uses a third party to explore solutions. Counselling aims to get the employee themselves to find solutions. Here is Auerbach's full quote:

"We like our players to play for fun and to be happy rather than afraid. It's like that with any business. If you have employees who work through fear, you're not going to get any ingenuity out of them. You're not going to get any employees who take a gamble or come up with ideas. All you'll have are robots who are going to do their jobs, have a low-key approach, stay out of trouble. They'll put in the hours and go home. But I'd rather have it the other way. So we talk to people. We don't fine them indiscriminately. A lot of teams have rules that say if you're late or miss the plane, you get fired. We have rules but we temper them with mercy. We talk to people."

5.5 Treating the Problem

It is always much better to look for solutions to disciplinary problems than hand out disciplinary penalties. Here are some examples:

a) if the problem is to do with performance, consider training, coaching, or changing people's jobs
b) if the problem is to do with people fitting in to the team, consider re-jigging the team
c) if the problem is apathy and boredom, consider giving people more say over what they do
d) if the problem is sickness, drink, or substance abuse, consider getting specialist help.

5.6 Tough Love

"Tough love" is a relatively new approach to dealing with behaviour issues. It means confronting bad behaviour but doing it with care and concern, not punishment and revenge. It is a technique that is used with unruly children at home and school. It involves refusing to accept bad behaviour; confronting excuses head-on; and taking action to stop the behaviour in its tracks. One feature of "tough love" is to demand more, not less, of people on the basis that poor behaviour comes from a low level of respect for self and others.

5.6.1 The Gentle Style

The "gentle" style of management accepts that the people in any enterprise are partners in that enterprise. When people break rules or perform poorly, they need to be treated like members of a family: exclusion and banishment are unthinkable and, if it is necessary, discipline is done with the best of intentions. The gentle management style believes that people change and grow, not by fear and threats, but by removing fear and encouraging people to take responsibility for their own actions and outcomes at work. Gentle management styles encourage, facilitate and allow. They have no need for punishment and discipline. They treat performance shortcomings as issues that need to be resolved.

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5.7 Changing Your Style

If you are spending too much of your time treating people problems through your disciplinary process, the chances are that your management style is an authoritarian one. This is a style known as Theory X management and is based on the view that people need to be kept in line or they will mis-behave. By changing your view of people, that they can be responsible for their own behaviour, you move your style into Theory Y management, the belief that people can discipline themselves if given the right leadership and motivation.

Whenever a case of discipline presents itself to you, don't automatically reach for the rule-book. Instead, stop and think about what's gone wrong and whether you can do something about it. That way, you are more likely to score a people management success than a people management failure.

5.8 Key Points

1. You should always consider what alternatives are available to solving people problems before opting for discipline.
2. According to research, nearly half of all people disciplined regard themselves as victims.
3. People sometimes feel like victims in disciplinary cases not because of what they have done but because of the way they are treated.
4. One way to use an alternative to discipline is to try an alternative but revert to the discipline if it doesn't work out.
5. Mediation takes the heat out of emotionally-charged issues and sees them as problems to be solved.
6. When choosing an alternative to discipline, you need to be aware of setting a precedent and the views of others in the team.

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6 Policy and Procedure

It makes good sense to have a disciplinary policy and procedure and to make this available to everyone in your organisation. In many countries, this is a legal recommendation, if not a requirement. A written policy explains what will happen to people in the disciplinary process and demonstrates your commitment to being fair and consistent.

Here are some of the important features of a disciplinary policy.

6.1 Policy and Procedure

It is a good idea to write your disciplinary policy with an eye on the legal guidelines where you are and with examples of best practice in your area of work. Generally speaking, the "policy" part of your document will cover areas such as: principles; responsibilities of management and employees; rights of employees; sanctions and penalties; decisions, appeals, dismissals; and special cases. The "procedure" part of the policy will cover areas such as: roles of those involved in the process such as disciplining officers and investigation officers; rules on panels; rules on witnesses; conduct of hearings; and notifications.

6.1.1 Needs of the Business

A disciplinary policy should never be a standardized document copied from a textbook, but a living document that relates standards and behaviour to the way your organisation works. For example, a small growing business might take a breach of confidentiality very seriously. A local authority might take legal infringements very seriously. An organisation in the leisure industry might take neglect of customer safety very seriously.

6.2 Principles

A statement of the principles on which a disciplinary policy is based should reflect what actually happens in practice. These principles should say something on the following areas...

- the importance of discipline in ensuring the order, safety and well-being of employees
- the responsibility of management to apply the policy fairly and equitably
- the aims of the policy to sanction, to promote improvement and to deter
- the structure of who has the right to run hearings and make decisions
- the need to develop the policy in the light of developments in good management practice and the pursuit of harmonious employer-employee relations.

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6.2.1 Codes of Practice

Various industry bodies around the world have their own codes of practice on disciplinary practice and procedures. Check out which apply where you are. Some of the themes of such codes of practice might include that the policy should be in writing; specify who is covered; be speedy; indicate who can take action; not dismiss for a first offence, except in cases of gross misconduct; ensure an investigation is carried out before a hearing is decided; apply to everyone regardless; give employees the right to be informed of complaints against them; to have time to respond; be accompanied; be told the reasons for a penalty; appeal.

6.3 Natural Justice

For your disciplinary process to be fair, your procedures should conform to the concept of natural justice. The natural rights of employees include the following:

a) to be told the case against you
b) to know the purpose of a hearing
c) to know the evidence against you
d) to be given time to present a self-defence
e) to be allowed to present your case
f) to be represented or accompanied
g) to be able to question witnesses and call your own witnesses.

6.4 Timescales

You should put timescales on certain key steps in your disciplinary process. Some of these may be laid down legally; others will be based on giving people enough time to prepare their case or decide on a response. Here are some actions that you should put time deadlines on:

a) request for details of an alleged offence
b) notification of a hearing
c) request for an appeal hearing
d) announcement of a decision
e) lifespan of warnings

6.5 Sanctions and Penalties

There are, generally speaking, 7 levels of penalty used in disciplinary cases. They are:

a) informal counselling for first or minor breaches
b) formal counselling for more complex breaches
c) first warnings to improve
d) second and third warnings for repeated breaches
e) final warning for serious repetitions
f) other action short of dismissal, such as demotion

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g) dismissal, either instant because of someone's misconduct, or because of a failure to conform to final warnings.

There are 2 accepted guidelines for applying these sanctions: first, the punishment should fit the crime; and second, penalties should be progressively more serious if employees fail to improve.

6.5.1 Decisions

Your policy should tell employees very clearly how disciplinary decisions are reached and what rights they have to appeal against any action, particularly dismissal. It is rare to find people who are happy at decisions taken against them in disciplinary cases. For them, most punishment is harsh and unfair. The opposite view is often taken by those looking on: most decisions seem too lenient. Appeals at each stage of discipline are essential to protect employees from unfair and biased decisions. There should be clear guidelines on how appeals are made. Clear guidelines should also exist for dismissal. The reasons for dismissal should usually be restricted to gross misconduct or failure to comply with previous warnings.

6.6 Records

It is vital to keep full and detailed records on every disciplinary case. This is because you may need to refer back to these in future cases or because a series of increasingly serious incidents may lead to dismissal and become the subject of a tribunal claim. You should, of course, keep records secure and confidential.

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6.7 Special Cases

When writing a disciplinary policy, think about the more unusual but potentially more problematical cases that may arise in your particular business. These special cases include:

a) the disciplining of workers who work at a distance, eg those on shiftwork or those at geographically remote locations
b) cases involving bosses and subordinates
c) cases involving people who are Union representatives
d) cases involving out-of-work behaviour.

Putting your disciplinary policy into writing is not an empty piece of bureaucracy. It is the framework which allows you to bring sense and order to one of the most difficult processes in employee-employer relations.

6.8 Key Points

1. Have a written disciplinary policy.
2. A disciplinary policy should reflect the importance the business attaches to its key values.
3. Except in cases of gross misconduct, you should not dismiss for a first offence.
4. A disciplinary policy should incorporate the natural rights which people have .
5. It is a good idea to place timescales on the steps taken in a disciplinary procedure.
6. Every organisation needs to include in its disciplinary policy how it deals with its own special cases.

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7 Counselling and Discipline

The counselling approach to discipline is a way of dealing with performance problems which avoids the potentially hostile approach of disciplinary action. The aim of counselling is to look at why a problem has arisen, force the employee to face up to the problem, and help them take action to resolve the problem.

Here are the key features of the counselling approach.

7.1 What Is Counselling?

Counselling is the number one approach in the workplace for resolving people problems. These can be personal problems, such as home problems affecting work; help with career choices; how to get people back to work after sickness; and crises arousing out of life changes such as divorce and bereavement. The principles, skills, and approaches used in helping people with these issues can also be applied to dealing with low-level disciplinary problems.

7.2 Counselling and Discipline

Counselling is a relatively recent approach to dealing with workplace disciplinary problems. It is most effective when problems are caught early and people are able to make changes fairly painlessly. One of the key differences between counselling and discipline is the difference in tone. While discipline is formal, counselling allows for a more informal tone in which discussions can be off the record and kept confidential. Some organisations will use counselling to resolve every first-time case of discipline.

7.3 What Counselling Is Not

Many people regard counselling as a soft response to discipline. This is only true if it is badly handled and allows people to get off lightly. In skillful counselling, employees are made to face up to unacceptable behaviour or performance. The focus is always on putting things right through employee action. Often, it will require some tough commitments and tough changes on the part of employees.

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7.4 When Counselling Works

Not every situation will be suitable for counselling. A serious case of misconduct, for example, is unlikely to be appropriate for counselling. Counselling works best when the breach of discipline is minor, unexpected, and attitudinal. It is also appropriate when there is a clear reason for the breach of discipline and when the employee accepts the problem and wants help to move on.

7.5 A Counselling Session

Counselling cannot be conducted without sitting down with employees face-to-face. Each session needs to be prepared, run and followed up with important features at each stage.

1. Preparation: in the preparatory work before a counselling session, you need to contact the employee, establish the right climate and set an agreed contract.
2. Session: the counselling session itself needs a clear structure for you to follow; a style that is open and trusting; and the use of a range of counselling skills.
3. Follow-up: the follow-up to a counselling session needs an agreement on results, a reinforcement of what action has been agreed and a review of how successful and appropriate the session was.

7.5.1 The Five Stages of Counselling

There are five stages in a classic disciplinary counselling session. Each follows on from the previous stage. At the end of each stage, summarise where you've got to and get the employee's agreement before moving on. These are the stages:

a) Contracting, which means outlining what you expect to do during the session
b) exploring, which means looking at the facts
c) challenging, which means spelling out the gap between the employee's behaviour and desired behaviour
d) solutions, which means closing the gap
e) agreement, which means summarising the action the employee plans to take.

7.5.2 Contracting

The contracting stage of a counselling session takes place before the session starts or in the first few minutes. In this time, you need to address matters on which you need agreement, such as the aims of the session, the timing and the outcomes, as well as setting a supportive tone. Some of the issues you can seek to clarify in the contracting stage include...

- the employee's commitment to the use of the counselling approach and its implications for them
- the need for solutions not recriminations
- your role as listener, helper and supporter not as talker, critic and judge
- the need for outcomes but not for pre-planned outcomes
- the need to look ahead more than to look back.

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7.5.3 Exploring

The stage of Exploring is the first stage of counselling proper and follows the contracting stage. Your role in Exploring is to establish that there is a gap between actual performance and desired performance and then to encourage the employee to explore the problem in their own way. Employees will only talk freely if they feel it is safe to do so. This means that you must build trust and let them know that a counselling session is not about blame and punishment. During the exploration stage, you should listen actively for awareness on the employee's part that there is a performance gap and acceptance that it is their responsibility to take action to close the gap. A crucial part of the exploring stage is to discuss the employee's feelings. Knowing how someone feels about a problem is a key to how likely a solution is.

7.5.4 Solutions

An acceptable solution in a counselling session is one which meets the following requirements...

- looks, sounds and feels right
- is not imposed by management but emerges as a result of the employee's awareness and acceptance of his or her responsibilities
- puts the onus for action firmly on the employee
- costs little to implement
- is consistent with the principles of previous solutions for similar problems
- has the backing, if need be, from the rest of the team
- can be implemented, even in part, straightaway.

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7.6 Counselling Skills

The skills of the counselling manager are those of person-centred therapy. This means working with people to help them explore options for change. These skills include: building trust and understanding; creating a safe climate; making assertive and challenging points about standards, rules, and targets; patient exploration of issues, active listening, sensible questions, and open communication; action based on creative and win-win solutions.

7.7 Reconciling not Dividing

Disiplinary processes are by their very nature divisive. Counselling processes are healing. Here are 3 other differences between counselling and discipline:

a) where discipline creates suspicion, counselling creates trust
b) where discipline assumes people work better if threatened, counselling assumes people work better if helped
c) where discipline encourages accusation and blame, counselling explores what can be done.

There is no guarantee that counselling will always succeed in disciplinary cases. However, compared to the punitive approach of discipline, it has many more positives in it than negatives. And when it works, not only will you have avoided the need for discipline, you will have solved the problem and created a new kind of relationship with your employee.

7.8 Key Points

1. Counselling is invariably a first-stage bud-nipping response to disciplinary problems.
2. Counselling is not a soft option for dealing with disciplinary problems but often involves difficult changes by employees.
3. Counselling only works if the employee is prepared to take steps to improve performance.
4. A counselling session may be appropriate for all but the most serious cases of misconduct.
5. Unlike straightforward discipline, a counselling approach allows the employee to talk about how he or she feels.
6. Some outcomes of counselling may need to be cleared with other team members who may be affected.

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8 Disciplinary Checklists

Using checklists to guide you through a disciplinary hearing makes sense for a number of reasons. It provides a systematic framework for managing each hearing. It means that everyone receives the same treatment. It ensures that key points that you must consider are covered.

The 3 phases of a disciplinary hearing are:

a) the pre-hearing, or preparation, phase
b) the actual hearing itself
c) the post-hearing, or follow-up, phase.

Here are examples of the kind of things you should be putting on your checklists for each of these phases; (add or amend them with your own lists.)

8.1 The Pre-Hearing Checklist

Good preparation is essential before you run a disciplinary hearing. It means that you will be focused and the hearing will run as planned. Here are some of the important tasks for you to do:

a) set a date and time that is suitable for all involved and gives them time to prepare for the hearing
b) find a location that can accommodate all those involved in the case, bearing in mind that you might need a waiting area, breakout facilities, as well as a hearing room
c) make a list of everyone who needs to attend. This could cover the following: the hearing panel; witnesses; person (or people) under investigation; representatives; secretarial help.
d) notify employees (and their line managers) of the date, time and place of the hearing
e) gather all relevant documents and evidence, including investigators' reports
f) study all the documents so you are familiar with the case
g) allocate the roles of those on the panel, eg chair, note-taker, and observer.

8.2 The Hearing Checklist

Every disciplinary hearing will be different because all cases are different. However, it is important from a consistency and fairness point of view that you follow a procedure that covers all the key points. The following checklist will help you do that.

a) start on time
b) collect employee and introduce the panel
c) offer the employee the right to be represented, if not already taken up. Record the employee's reply.
d) outline the aim, structure, and timescale of the hearing
e) ask the employee to indicate at any stage if they feel the hearing is being unfair
f) start the hearing by outlining the standard or rule that is alleged to have been breached and indicate the gap between the alleged behaviour or performance and the behaviour or performance expected.

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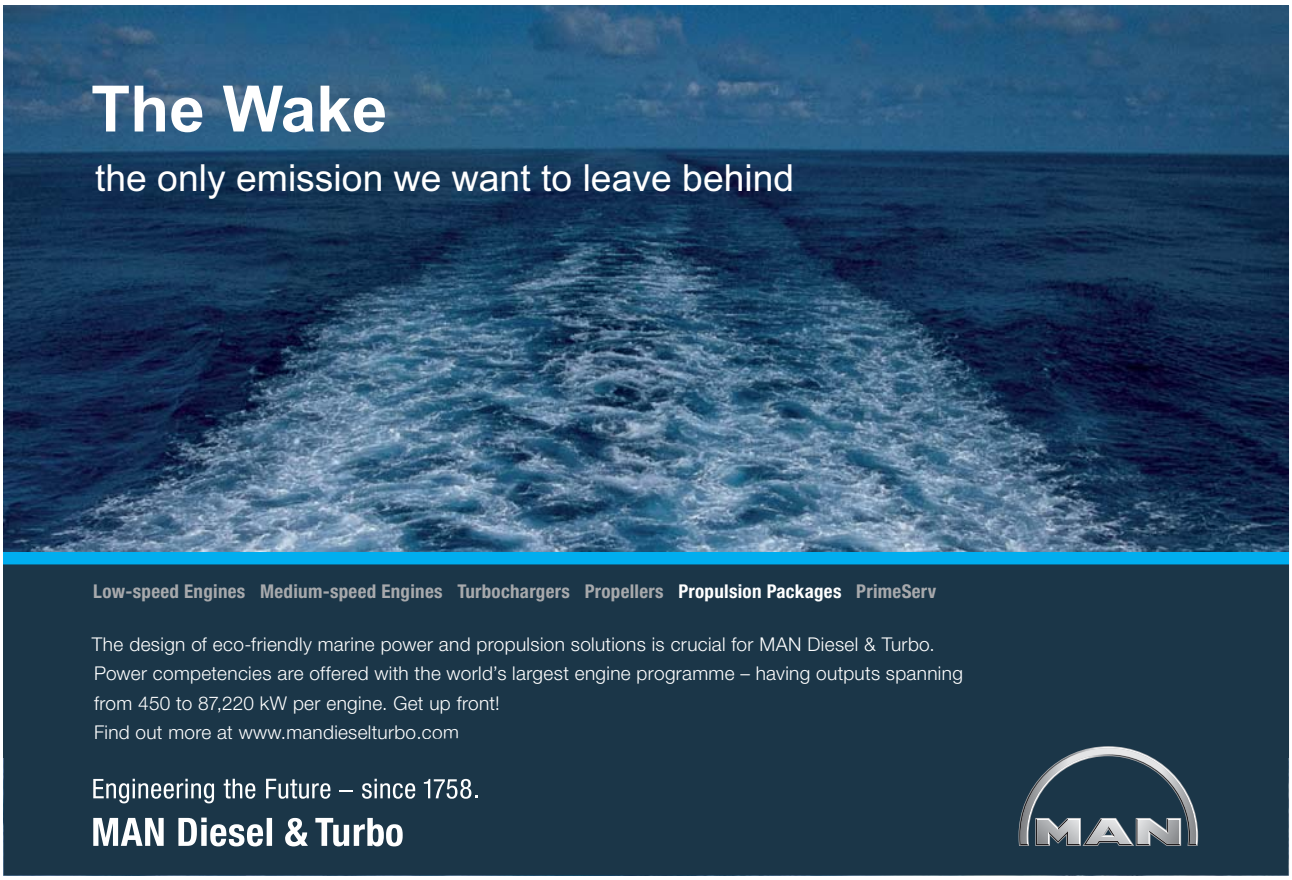
g) establish whether the case is disputed or not. If disputed, you will need to spend the next part of the hearing listening to the case from witnesses and allow questions to be put from yourselves and the employee to clarify the facts.
h) at the end of the case hearing, adjourn to consider what action to take
i) return and let the employee know how you view the facts and the decision you are going to take
j) ask the employee whether he or she wants to respond.
k) outline any appeal procedure
l) close the hearing.

8.3 The Post-Hearing Checklist

The end of the hearing is not the end of your task-list and not the end of the process. Use the following checklist to complete your tasks and sew up the process.

a) record the outcomes of the hearing eg on the employee's file
b) send a confirming letter to the employee and representatives
c) notify anyone else who needs to know the outcomes of the hearing, eg wages department if someone is suspended or dismissed. You may like to inform the line manager out of courtesy to keep them informed.
d) monitor any action agreed as part of an improvement plan
e) place notes in the diary for reviews and expungement dates (eg dates when a warning runs out)
f) review your own performance.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Using checklists doesn't just keep you on the right side of your company's policy and the law; it also means you treat employees fairly and consistently.

8.4 Key Points

1. Use checklists to make sure you are fair and consistent to everyone who undergoes discipline.
2. Use checklists to ensure you don't forget important procedural issues such as the offer of appeals.
3. A pre-hearing checklist ensures you are well-prepared.
4. A checklist during the hearing ensures you follow your own procedure and are legally fair.
5. A post-hearing checklist ensures that you carry out your decisions in a way that will produce the result you want.
6. Follow your checklists discreetly so that it is not obvious you're doing it.

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9 The Disciplinary Hearing

The disciplinary hearing is the grand set-piece of the disciplinary process. At one end of the scale, it can be a one-to-one discussion between you and your team member in which you informally agree on new behaviours. At the other end of the scale, it can be a full-scale panel hearing with legal representatives presenting their cases and cross-examining witnesses.

Here are some of the features of hearings that you need to consider.

9.1 What Kind of Hearing?

There are four types of disciplinary hearing based on how serious the matter is and whether the case is disputed.

a) if the case is not serious and not disputed, deal with it through one-to-one counselling, not a hearing
b) if the case is not serious but is disputed, deal with it by gathering reports from an investigation officer and using these to decide how far the employee is responsible
c) if the case is serious and not disputed, deal with it by what in judicial parlance is known as "a guilty hearing". In these cases, you will not need to call witnesses.
d) if the case is serious and is disputed, deal with it by what in judicial parlance is known as "a not-guilty trial". In these cases, you will hear from witnesses and representatives will be able to question and cross-examine witnesses.

9.2 Who Is To Organise It?

Depending on the nature of the hearing, someone should be appointed to organise the hearing. The following points will need to be considered. Who will need to be involved? What is the case about? What are the facts? What precedents exist? What is the employee's previous record? What rule or procedure is alleged to have been breached? Where and when is the hearing to be held? How is the hearing to be conducted?

9.3 How Should You Chair?

The primary function of the chair of a disciplinary hearing is to conduct the hearing in a business-like manner. You also need to be aware of the gravity of what is taking place. Remember that you are not there to judge or condemn, but to review the continuation of the employee's contract of employment. Watch out for any authoritarian tendencies on your part and be alert to anything which might be unfair or construed as unfair. Be humble and dignified throughout.

9.4 Representation

It is one of the tenets of natural justice, as well as possibly a legal right where you are, that an employee should be represented at a hearing if they wish. If you are running the hearing, you need to clarify the role of the representative. This can range from simply being a friend of the employee to undertaking a full defence.

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9.5 What are the Stages?

The classic shape of a disciplinary hearing has 5 stages:

1. an introduction consisting of formalities, introductions, an outline of the aims, and an outline of the employee's rights
2. depending on the type of hearing, (see 1 above), hear the case or review the evidence
3. hear what the employee has to say
4. adjourn to decide on disciplinary action; return to announce your decision
5. close the hearing by outlining subsequent steps, right of appeal, and time periods of any warnings.

9.6 The Do's and Don'ts

The following are some of the Do's and Don'ts for chairs and panel members in disciplinary hearings.

Do listen carefully, show interest, and respect confidentiality.
Do turn up on time with a good knowledge of the case.
Do behave in a neutral manner that doesn't betray your thoughts or feelings.

Don't pre-judge the case.
Don't argue, brow-beat, make physical contact, tut-tut, or make light of the issues.
Don't play power-games with representatives.
Don't leave employees in limbo not knowing their fate.

Brain power
By 2020, wind could provide one-tenth of our planet's electricity needs. Already today, SKF's innovative know-how is crucial to running a large proportion of the world's wind turbines.
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9.6.1 Helpful Behaviours

The following are helpful behaviours in a disciplinary hearing:

- be prompt and conduct the hearing without unnecessary delays
- be humble and humane
- respect confidentiality. Discuss the case with nobody other than those who need to know.
- listen carefully, actively and respectfully; aim to understand not condemn
- stick to the facts
- be clear on your aims in disciplining
- consider mitigating circumstances
- constantly relate the case to the contract of employment and what is reasonable and unreasonable in the light of the employee's job
- take full notes for the record.

9.6.2 Unhelpful Behaviours

It is unhelpful to use the following behaviours in a disciplinary hearing...

- pre-judging the case
- getting personal
- arguing
- playing power games (eg with Union representatives)
- continuing the hearing when emotions are high
- bullying or brow-beating
- making physical contact
- leaving employee waiting to know his or her fate
- pontificating, lecturing, gloating, moralising, tut-tutting
- making more of trivial cases than is necessary
- threatening employees
- joking, smiling or making light of the matter.

9.7 How Do We Reach a Decision?

The process of coming to a decision in a disciplinary case involves weighing up a range of factors and applying the most appropriate action. You will need to consider the facts of the case against the employee's contract, their record, and other similar cases. You should also consider any mitigating factors and put everything in the context of the organisation's business. Then filter all this information through what is fair and reasonable and come up with your decision.

Disciplinary hearings are not to everyone's liking. They are a sideshow to what the organisation exists for and can only be regarded as a cost. However, when there is no alternative, they should be handled in the most efficient and fairest manner possible. These steps will ensure you do that.

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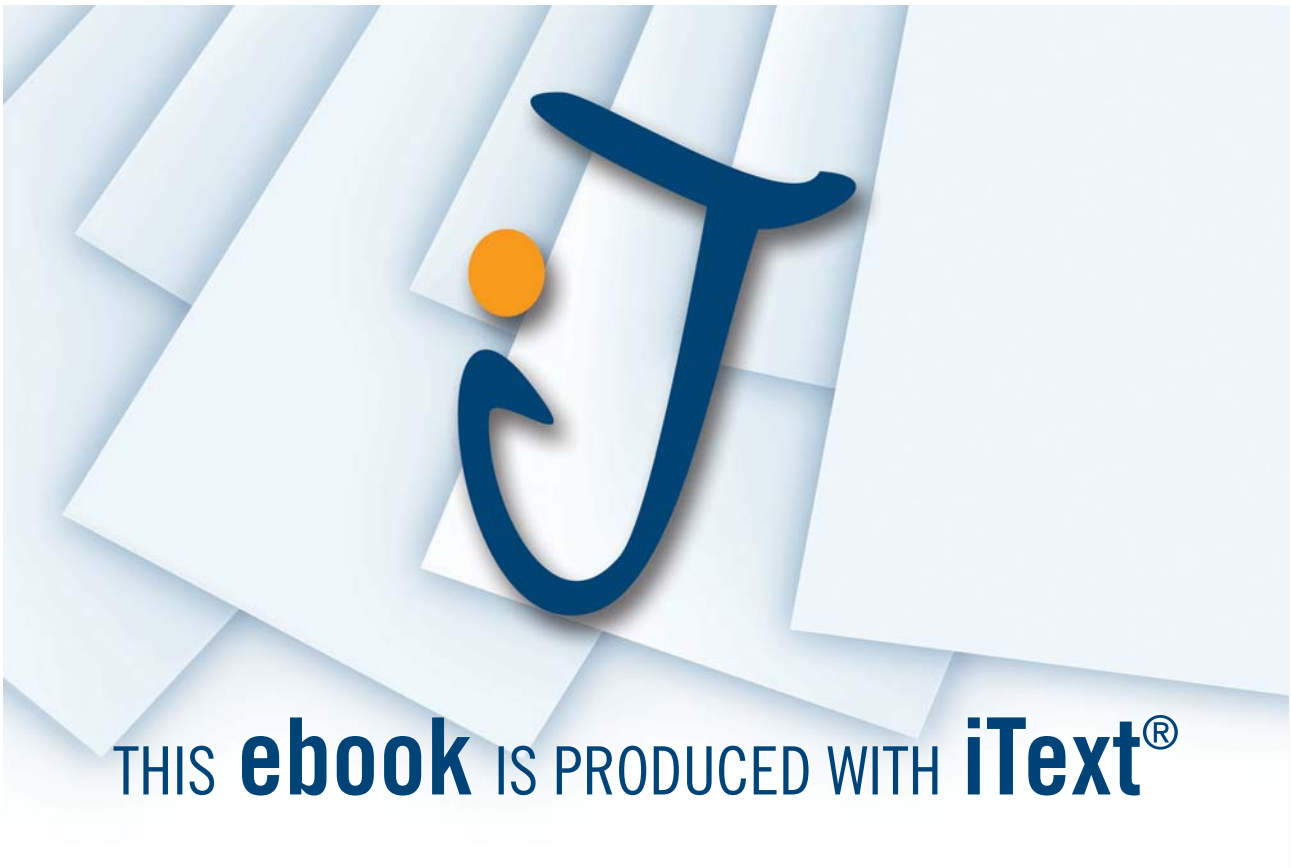
9.8 Key Points

1. Before hearing a disciplinary case, you need to weigh up how serious the case is and how much is disputed.
2. A not serious undisputed case could probably be dealt with through a counselling session.
3. A serious disputed case will require you to hear witnesses and evidence in a formal hearing.
4. Checklists throughout all stages of a disciplinary hearing ensure that you do not miss anything important.
5. A disciplinary hearing is about resolving a problem, not about judging and condemning.
6. Your disciplinary policy should clarify the role of representatives at a hearing.



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10 Dismissal

Dismissals are the ultimate step in discipline, either because the seriousness of the conduct breaches the trust at the heart of the contract or because employees have done nothing to heed previous warnings about where their behaviour might lead. When you have to consider dismissal, you need to weigh up far more factors than you do in a straightforward case of discipline. Above all, you need to keep on the right side of the law.

The following are some of the factors you need to think about; (note, these are only for guidance and are not indications of what may be the case where you are.)

10.1 The Ending of Contracts

A contract of employment ends when one or other side brings it to an end. There are, generally speaking, 3 kinds of employee-initiated endings and 3 kinds of employer-initiated endings.

Employee-initiated endings are resignation; mutual agreement; and the end of a fixed-term contract.

Employer-initiated endings are: contract frustration; constructive dismissal; and dismissal for disciplinary or other reasons.

10.2 Fair or Unfair?

The law in your country will determine what constitutes an automatically fair or unfair dismissal. Here are some examples (but check what applies where you are):

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A dismissal may be fair for the following reasons: lack of qualifications; incapability; gross misconduct; redundancy; pregnancy outside a protected period; when continued employment would be illegal; and some other substantial reason.

A dismissal may be unfair for the following reasons: union membership; pregnancy within a protected period; business transfer; redundancy contrary to accepted practice.

10.3 Contract Frustration

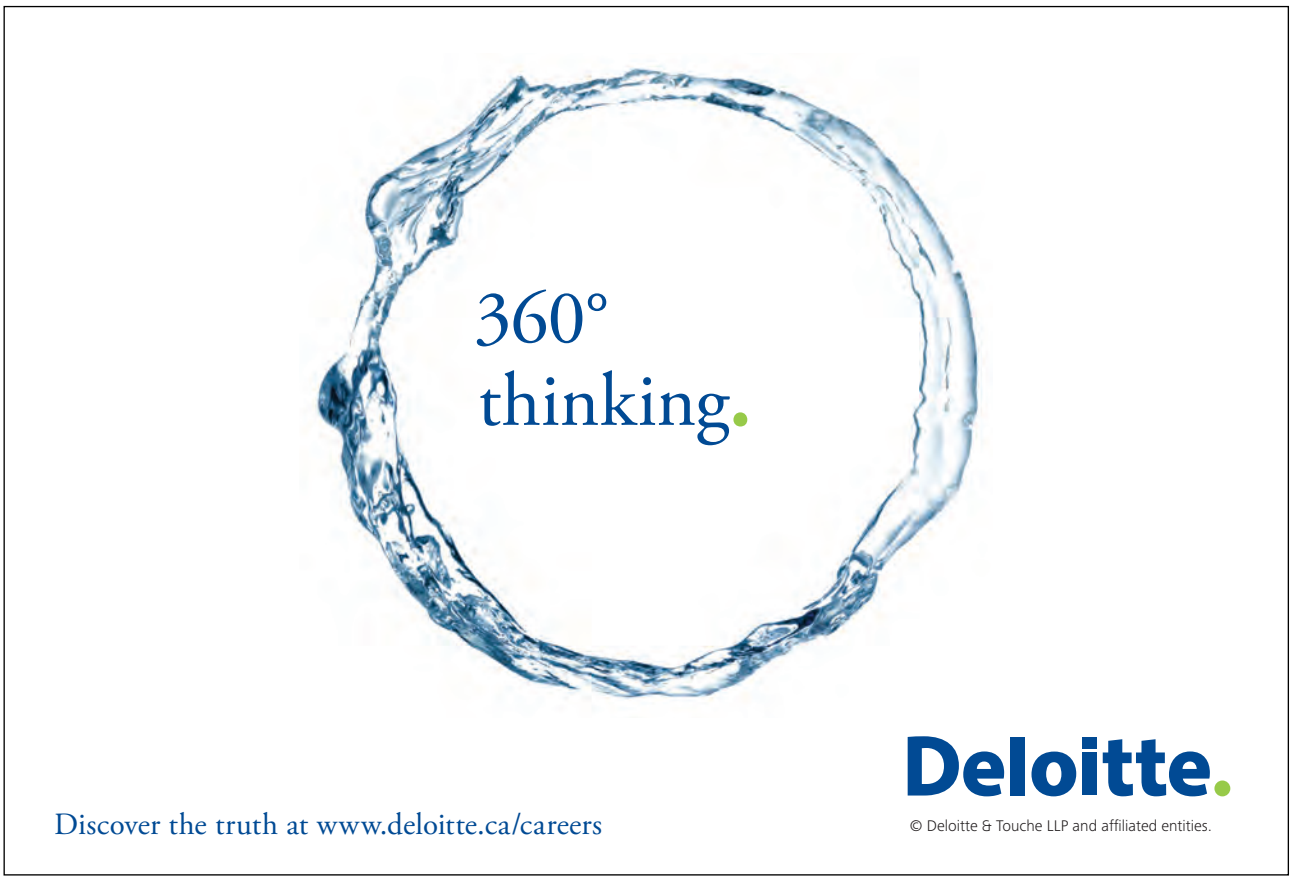
When a contract of employment is frustrated, there is no dismissal and no resignation, but the contract cannot be continued. Neither side is to blame and the event causing the frustration must have been unforeseeable at the start of the contract. Examples are long-term sickness and imprisonment.

10.4 Constructive Dismissal

A constructive dismissal occurs when an employer behaves in such an unreasonable way that the employee is justified in breaking the contract and leaving. Examples could be: changing someone's terms and conditions without their agreement; taking someone else on to do the employee's work without explanation; and seriously undermining the employee's authority.

10.5 Redundancy

Always check the legal requirements in your country for what constitutes fair and reasonable redundancy. This means checking when a redundancy situation exists; what is a fair selection procedure; the notice periods you need to give; and any consultation requirements.



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10.6 Fair Dismissal

If you have to dismiss someone, either because of their behaviour or for some other reason, the dismissal must be fair. Here are some of the things you would need to consider in 5 cases:

10.6.1 lack of a qualification

Where a job relies on an employee possessing a qualification, failure to have the qualification or keep it could be grounds for a fair dismissal. Examples include: loss of a driving licence and loss of a professional qualification.

10.6.2 sickness incapability

Dismissing someone for sickness incapability is likely to be fair and reasonable only if you can prove certain conditions, eg that you cannot leave the job open any longer and you are unable to offer the person alternative work.

10.6.3 statutory prohibition

A dismissal is likely to be fair when an employee is unable to continue his or her duties because of a statutory restriction, such as a driver who receives a driving ban or a food handler who contracts serious food poisoning. You would still need to demonstrate fairness through considering alternative work.

10.6.4 gross misconduct

Gross misconduct covers a wide range of behaviours, from dishonesty to fighting to sexual misbehaviour and negligent workmanship. To be sure that your dismissal is fair, you would need to meet certain conditions, for example that the employee knew that dismissal would result from his or her actions.

10.6.5 other substantial reason

Dismissal for other substantial reasons covers any other situation that might arise which meets the tests of fairness and reasonableness. Examples include: the irretrievable breakdown of the employer-employee relationship eg through working for a competitor.

10.7 Gross Misconduct

The majority of disciplining cases centre on the behaviour of the employee at work rather than on their attitude or job performance. These cases can range from minor acts of misconduct to major acts of gross misconduct.

Dismissal for gross misconduct is likely to be fair and reasonable in the following circumstances...

- there is clear evidence that a rule was broken
- the behaviour was so outrageous that trust has been broken
- it is widely known that such breaches would lead to dismissal
- you can show evidence that the rule and action to discipline breaches are consistently applied
- there are no mitigating circumstances
- you have genuine grounds for believing that the employee is guilty of gross misconduct.

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10.7.1 Misconduct Unbecoming

Misconduct can occur in various forms, possibly as a once-off incident, or a series of increasingly worsening behaviour. These are seven of the most frequently-met types of misconduct...

1. Dishonesty: dishonesty is any behaviour which seeks personal and illegal gain at the employer's expense. It includes: business fraud, false accounting, lying and deceit, theft, clocking offences.
2. Fighting and violence: violence can have a loose definition encompassing verbal violence, such as swearing, as well as physical fighting and mental cruelty. This category also includes: dangerous horseplay, bullying, racial and sexual harassment and threats.
3. Sexual misbehaviour: sexual misbehaviour can take place in the workplace and be misconduct; or take place out of the workplace and because of its indecent, immoral or illegal aspects affect the work someone does.
4. Drink and drugs: the use of intoxicants and narcotics is likely to be covered in a rule book. Where they are forbidden, any breach of rules is likely to be even more serious if they place people in danger.
5. Negligent workmanship: where workmanship is poor because of an employee's carelessness, recklessness or negligence, it is likely to be classed as gross misconduct. There may be a cost to the employer in damage to materials or property.
6. Refusal to carry out instructions: blatant refusal to carry out instructions which are reasonable is likely to be regarded as misconduct unless an explanation is given.
7. Abuse of time off work: when a request to be absent from work is agreed and later turns out to be false, there is likely to be a case for misconduct discipline. The obvious cases are claiming to be sick and drawing sick pay when the employee is not ill.

10.7.2 Aggravating Factors

When considering cases of misconduct, an employer should take into account aggravating factors which might make the offence much worse.

These are some of the commonest aggravating factors...

- the seniority of the employee. Because senior figures in an organisation set the tone and lead others, their misconduct is more serious.
- the position of confidence placed in the employee. Theft of money by a Finance Director would be more serious than pilfering by an apprentice.
- the possible effect of misconduct on the employer's business, reputation and customer relationships
- the worsening of workplace relationships
- risks to others such as their health and safety.

10.7.3 Misconduct and Proof

Employers are often wary of dismissing an employee for suspected gross misconduct if they do not have absolute proof of the employee's guilt. This may arise when the full facts are difficult to establish or, as a business, they have neither the time or resources to conduct a full-scale investigation as the police would do.

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The case of Burchell and British Home Stores established the principle that an employer does not need to have absolute proof of guilt to believe an employee is guilty of misconduct. This holds true even if a later court of law finds the employee innocent.

What matters is that, at the time of the disciplinary hearing, the employer has sufficient evidence to believe that the employee is guilty. If his belief is reasonable and his procedures carried out fairly, he can defend a decision to dismiss.

10.8 Appeals

Employees who are dismissed should be told of their right of appeal and how they might make their appeal. An appeal should normally be made to the next level of management or to a special committee. Your policy should state clearly what the grounds of an appeal can be, eg that the hearing failed to follow the correct procedure. Note that there will usually be laid-down time limits on responding to, and deciding on, an appeal.

10.9 A Dismissal Checklist

As well as the facts of the case, you should take into account other factors before making a decision to dismiss. These other factors include:

a) the employee's previous disciplinary record and length of service
b) the size and nature of the business and the impact of the disciplinary problem on the business
c) the appropriateness of the decision and how other similar cases were treated
d) whether your disciplinary procedures were followed
e) whether alternative courses were considered and, if so, why they were rejected.

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This overview gives you the key issues to consider when you dismiss someone. It does not claim to be the last word on how to ensure you are able to dismiss fairly and stay on the right side of the law. Use it as the starting point for further study and explanations.

10.10 Key Points

1. Any dismissal by an employer must be fair and reasonable.
2. Legislation lays down situations and circumstances when a dismissal is automatically fair or unfair.
3. A reasonable employer would be expected to seek alternative work for an employee who becomes disqualified or incapacitated.
4. A redundancy is only fair if work has ceased or diminished.
5. Few dismissals are likely to be fair if the employee had no knowledge that dismissal would result from their actions.
6. It is your reasonable belief in an employee's guilt that determines whether a dismissal is fair, not whether you have absolute proof.

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11 Web Resources on Effective Discipline

The following instantly-accessible website resources provide more in-depth information on some of the tips, techniques, and features in this book.

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